HON'BLE SMT JUSTICE T MEENA KUMARI

AND

HON'BLE SRI JUSTICE P LAKSHMANA REDDY

Writ Appeal No. 1218 of 2000

Dt.12 -08-2005

Between:

Y. Ravinder, s/o. Narayana,

Aged 24 years, R/o. Parkal,

Warangal District, A.P. ..Appellant/Petitioner

And

1. The Area Commandant, C.I.S.F.,

   Ramagundam, Karimnagar Dist. A.P.,

   And 2 others

..Respondents.

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Writ Appeal No. 1218 of 2000

Judgment (per Hon'ble Smt T.Meena Kumari, J):

1. The appellant, who is the writ petitioner, has challenged the decision of a learned Single Judge of this Court dated 9.11.1999 dismissing his writ petition W.P. No. 1824 of 1993 and upholding an order passed by respondent No. 2 terminating the appellant's services.

2. The brief facts that led to filing the present appeal are as follows:-

Appellant herein was appointed to the post of Constable by Order dated 21-2-1991 in the Respondent-Organization. Before the appellant was permitted to join, he underwent basic training for nine months. The date on which petitioner commenced service was from 2-11-1991 vide appointment letter. On 15-2-1992, respondent No.2 issued notice to the appellant informing termination of his services, as he was found unsuitable for being continued in the service. It was also stated that the appellant's performance was not satisfactory during the probation period and his services were terminated by one month's notice as per Rule 15 of Central Industrial Security Force Rules, 1969 (hereinafter referred to as 'the CISF Rules') read with clause 2(a) of the Agreement executed by the appellant at the time of entering in service. No reasons were assigned in the order of termination. As there was no remark or complaint against the appellant, the order of termination on the grounds of unsatisfactory performance is only by way of punishment and not termination simpliciter. No disciplinary enquiry was held nor any opportunity was given to the appellant before issuing termination order. Thus, the order of termination is violative of principles of natural justice and is liable to be quashed and consequently appellant be declared to be still in service. Questioning the said order, the writ petition was filed. The respondents herein contested said allegations on the ground of jurisdiction and also on the ground that the appointment of the appellant was with a specific understanding that he would be on probation for a period of two years and if found unsuitable, his services will be terminated. It was further stated that apart from service Rules, a specific agreement to the above effect was also

signed by the petitioner along with other recruitees. As the performance of the appellant during the probation period was found unsatisfactory and not up to the mark, his services were terminated. It was further stated that the appellant was even charge sheeted once and punishment was inflicted of reduction in scale by memorandum dt. 17/18-4-1992. The services of the petitioner were terminated merely on the ground of unsatisfactory performance during the probation period and not by way of disciplinary action and that as the termination is simpliciter without stigma on the appellant, it is not open for him to challenge the same.

3. A learned Single Judge of this Court, on a consideration of the material available on record, arguments advanced and taking into consideration the legal position thereon, came to the conclusion that the various circumstances are sufficient for subjective satisfaction that appellant's services were unsatisfactory and that he was not suitable for being continued, and held that the order is purely order of termination without any stigma on petitioner and was in terms of Rules as well as per the agreement entered into by appellant. Aggrieved by the findings of the learned Single Judge, the appellant preferred the present writ appeal.

4. Learned counsel appearing on behalf of appellant has argued that the impugned order of termination dt. 13-5-1992 was punitive and cast a stigma on the appellant and could not be sustained without a full-scale departmental inquiry. It has been argued that the termination order was founded upon allegations of misconduct against the appellant. No enquiry had been conducted against the appellant. In support of the submission that the order was punitive, the appellant drew up our attention to a statement made in the explanation given by the appellant disclosing the particulars of a criminal case filed and dismissed against him.

5. It has been submitted by the counsel appearing on behalf of the respondents that the order was neither stigmatic nor punitive and that it is purely on the grounds of unsatisfactory performance during the

period of probation and unsuitability of the appellant to the post he was held and hence the same cannot be challenged.

6. Heard the learned Counsel on either side.

7. The appellant was appointed on 21-2-1991 to the post of Constable and was permitted to join duty at Burnpur in West Bengal after completing his basic training. At the time of entering into service, the appellant also signed the Agreement. Clause 2 of the agreement provided:

2. I understand and agree that my services can be terminated;

a. by the Deputy Inspector General at any time during the period of my initial training or the period of my probation there after on issue of notice of one month or the tender of one month's pay in lieu of such notice, or

b. XXXXXXXXXXXXXXX;

8. In the present case, the notice of termination of service i.e., impugned order is as follows:

"……

Whereas No. 9133500044 Constable Y. Ravinder s/o. Shri Y. Narayana was appointed in CISF on 21.1.1991(FN) on temporary basis vide principal CISF, RTC, Arakkonam (TN) SO Pt. I No.05/91 Dt. 21-2-1991. After completion of Basic Training at CISF, RTC Arakkonam (TN) he reported his arrival in CISF Unit IISCO, BURNPUR(W.B) on 2-11-1991(Fn) for duty.

2.Whereas the retention and continuance of No.913500044 Constable Y. Ravinder in service is subject to satisfactory performance and completion of the probation period for a period of two years.

3.Whereas No.913500044 Constable Y. Ravinder is found to unsuitable for retention in service in view of his unsatisfactory performance during the period of probation.

4.Now, therefore, the undersigned in terms of Rule 15 of CISF Rules, 1969, read with Clause 2(a) of the agreement form executed by the said No.913500044 Constable Y. Ravinder hereby given one month's notice of termination with immediate effect.

Sd/- 15-2-92.

Sd/-xxxxxxxxx

The order of termination dt.13-5-1992 reads as follows:

"……

The services of No.913500044 Constable Y. Ravinder has been terminated with effect from 13.5.1992(AN). He will deposit Government clothing and equipments to the Quarter Master Store immediately. XXXXXXXXX.

Sd/xxxxxxx

13-5-1992

9. Before considering the facts of the case before us, the first test needs to be cleared is what language in a termination order would amount to a stigma? A Division Bench of the Supreme Court while dealing with a similar matter in *PAVANENDRA NARAYAN VERMA v., SANJAY GANDHI PGI OF MEDICAL SCIENCES AND ANOTHER, had* referred to various case laws dealt by the Supreme Court and various other High Courts from time to time and held;

" Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order, which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. In order to amount to a stigma, the order must be in a language, which imputes something over and above mere unsuitability for the job.

> In the present case, the language used in the order of termination is that the appellant's "work and conduct has not been found to be satisfactory". It can therefore safely be held that the impugned order is not *ex facie* stigmatic."

10. Though, the learned counsel for the appellant placed reliance on a decision of the Supreme Court in ***V.P. Ahuja v., State of Punjab & Ors***., for the proposition that a probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice, yet, the above said case was also considered by the Apex Court in Pavanendra Narayan Verma(1st cited) case. Further, the Supreme Court in a recent case reported in ***Registrar, High Court of Gujarat and another vs., C.G.Sharma*** at para 43 observed as follows:

> "43. But the facts and circumstances in the case on hand is entirely different and the administrative side of the High Court and the Full Court were right in taking the decision to terminate the services of the respondent, rightly so, on the basis of the records placed before them. We are also satisfied, after perusing the Confidential Reports and other relevant Vigilance files etc. that the respondent is not entitled to continue as a Judicial Officer. The order of termination is termination simpliciter and not punitive in nature, and, therefore, no opportunity needs to be given to the respondent herein. Since the overall performance of the respondent during the period of probation of the respondent be terminated because of his unsuitability for the post. In this view of the matter, order of termination simpliciter cannot be said to be violative of Articles 14, 16 and 311 of the Constitution of India. The law on the point crystallized that the probationer remains probationer unless he has been confirmed on the basis of the work evaluation. XXXXXXXXXXX."

11. Returning to the facts of the case on hand, a perusal of the termination notice and the language used therein reveals that the order of termination was founded purely on the ground of unsuitability

of the appellant for retention in service in view of his unsatisfactory performance during the period of probation and also it was founded in terms of the CISF Rules read with a clause in the agreement form. In view of the background of the above facts that the order of termination is only in accordance with the Rules and the agreement, taking into consideration the legal position settled by the Supreme Court in C.G. Sharma's case and other cases, we are of the opinion, that the impugned order of termination is without any stigma and the learned Single Judge is right in dismissing the writ petition and it does not suffer from any illegality or irregularity.

12. In the result, the writ appeal is dismissed. No costs.

(T. MEENA KUMARI, J)

Dt. 12/08/2005

(P LAKSHMANA REDDY, J)

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